

NOTICE OF PENDING MOTION TO SEAL

RECEIVED
COURT OF CRIMINAL APPEALS
8/24/2022
DEANA WILLIAMSON
CLERK

Jacki L. Pick files the following Emergency Motion to Stay Proceedings
subject to the pending Motion to Seal that she has filed concurrently.

No. _____

IN THE TEXAS COURT OF CRIMINAL APPEALS

IN RE JACKI L. PICK

JACKI L. PICK,
Relator

THE FIFTH COURT OF APPEALS, DALLAS, TEXAS,
Respondent

THE STATE OF TEXAS,
Real Party in Interest

On Petition for Writ of Mandamus
Fifth Court of Appeals No. 05-22-00817-CV
Criminal District Court No. 1, Dallas County No. OSW-22-00030-H

**EMERGENCY MOTION TO STAY
ON PETITION FOR WRIT OF MANDAMUS**

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**ATTORNEYS FOR RELATOR
JACKI L. PICK**

**TO THE HONORABLE JUSTICES OF THE COURT OF CRIMINAL
APPEALS:**

COMES NOW **JACKI L. PICK**, Relator herein, and files this Emergency Motion to Stay pursuant to Texas Rule of Appellate Procedure 52.10, and, in support thereof, Relator would show:

I.

NATURE OF MOTION

This action involves an improperly issued order that mandates that Mrs. Pick travel to Atlanta, Georgia today to testify tomorrow (August 25) before a Georgia “Special Purpose Grand Jury” empaneled to investigate and issue a report on alleged improper activities surrounding the 2020 presidential election.

Mrs. Pick emergently moves the Court to stay the district court’s order directing her to fly to Atlanta, Georgia and testify before a “Special Purpose Grand Jury” until this Court can consider and rule upon the mandamus action.

This matter is submitted as an emergency motion under Rule 52.10 because (1) the Fifth Court of Appeals issued its order improperly denying Relator’s mandamus action at approximately 6:00 PM yesterday (August 23); and (2) absent immediate action from this Court, the entire proceedings will be moot and this Court will be deprived of jurisdiction to hear this matter as Mrs. Pick must travel to

Georgia in a few hours to comply with the trial court’s order that is the subject of the mandamus action.

On August 18, 2022, Mrs. Pick first petitioned the Fifth Court of Appeals for a writ of mandamus and moved that court to stay the district court’s order. *In re Jacki L. Pick*, No. 05-22-00817-CV (Tex. App.—Dallas Aug. 18, 2022); R.101, R.106–18, R.119–213.¹ Mrs. Pick filed her petition and motion to stay as an emergency, but the Fifth Court of Appeals waited six days to deny both in a two-page opinion based on an alleged procedural defect with the record.² As discussed in detail in the Petition for Writ of Mandamus, that opinion was erroneous as there was no procedural defect—indeed, the Fifth Court of Appeals has accepted records with the same language in other matters—and even if a defect existed, the court of appeals’ opinion both (1) fails to inform Mrs. Pick what the alleged error was so that it could be cured and (2) erroneously held that the alleged defect mandated a denial of the mandamus action.

The court of appeals’ delay in ruling on Mrs. Pick’s petition and motion to stay has left her with no practical opportunity to cure any alleged procedural

¹ Citations of this style refer to the record filed concurrently with Mrs. Pick’s Petition for Writ of Mandamus.

² The Fifth Court of Appeals did, however, grant Mrs. Pick’s motion to seal the proceedings. Order, *In re Jacki L. Pick*, No. 05-22-00817-CV (Tex. App.—Dallas Aug. 23, 2022), R.219.

defects by supplementing the record or even filing a new action. Now left with mere hours before she is compelled to travel to Georgia, Mrs. Pick seeks relief from this Court. If this Court does not stay the district court's order, the matter will be imminently moot and this Court will be unable to address the merits of Mrs. Pick's petition.

Significantly, a stay of the order will in no way prejudice anyone as the August 25 date in the trial court's order is purely random. The Georgia "Special Purpose Grand Jury" has been empaneled for a year and the district attorney has recently stated that it will be hearing witnesses and working until at least the end of 2022. Indeed, the Eleventh Circuit Court of Appeals recently stayed an order that would have required Senator Lindsay Graham to appear and testify before this same Special Purpose Grand Jury until the court could properly consider the legal issues raised in his objections. Order, *Fulton County Special Purpose Grand Jury v. Lindsey Graham*, No. 22-12696-DD (11th Cir. Aug. 21, 2022), R. 331–32. This scenario—the need for a stay to preserve the status quo so that the case does not become moot before the court can properly consider the merits—is the very reason Texas Rule of Appellate Procedure 52.10 was created. Therefore, the Court should stay the trial court's order directing Ms. Pick to appear in Georgia on August 25, 2022 until the Court can consider the Petition for Mandamus.

II.

FACTUAL BACKGROUND

The full details of this case and the parties are set out fully within the Petition for Writ of Mandamus, which is incorporated by reference as if set forth in full herein. Mrs. Pick describes below only those facts relevant to the relief sought in this Motion.

A. Georgia Empanels a “Special Purpose Grand Jury”—a Unique Civil Body Created Under Georgia Statutes—and Seeks to Compel Mrs. Pick to Testify.

On January 20, 2022, the Fulton County, Georgia, District Attorney requested that the judges of the Superior Court of Fulton County agree to empanel a “Special Purpose Grand Jury” to investigate possible criminal disruptions in the 2020 presidential election. R.029. The Superior Court granted the request and empaneled the “Special Purpose Grand Jury” to sit from May 2, 2022 through up to May 1, 2023. R.040–42.

While the state of Georgia has normal criminal grand juries, its legislature created the unique “Special Purpose Grand Jury” process in 1974 as a tool to investigate public corruption without the restraints of due process that hampered criminal grand juries. 1974 Ga. Laws 270 § 1. “Special Purpose Grand Juries” are not subject to the same level of secrecy as ordinary grand juries; they can issue public reports of what transpired before them; and they are free to interrogate

targets of their investigation. *Id.*; *see also* A.018, 023.³ A Georgia “Special Purpose Grand Jury” is allowed to operate with this lower level of due process because it is not a criminal proceeding. “[S]pecial purpose grand juries conduct only civil investigations.” *Kenerly v. State*, 715 S.E.2d 688, 692 (Ga. Ct. App. 2011), *cert. denied*, 2012 Ga. LEXIS 265 (Ga. 2012). A “Special Purpose Grand Jury” cannot issue indictments or special presentments and is authorized only to issue a written report summarizing its investigation. *Id.*; *accord State v. Lampl*, 770 S.E.2d 629 (Ga. 2015) (affirming that, unlike a grand jury, a “Special Purpose Grand Jury” is statutorily limited to civil investigations outlined in the formation order and cannot issue indictments).

B. The Fulton County District Attorney Improperly Seeks to Compel Mrs. Pick to Testify by (1) Using the Wrong Statute and (2) Failing to Meet the Legal Requirements for Obtaining Out-of-State Testimony.

The Fulton County District Attorney determined that it wanted to present the “Special Purpose Grand Jury” with the testimony of Relator Jacki Pick. However, because Mrs. Pick is a resident of Dallas, Texas, she is beyond the subpoena power of a Fulton County, Georgia court. Nonetheless, as a civil proceeding, the “Special Purpose Grand Jury” can seek Mrs. Pick’s testimony pursuant to Texas Rule of

³ Citations of this style refer to the Appendix attached to Mrs. Pick’s Petition for Writ of Mandamus.

Civil Procedure 201.2—which implements Texas Civil Practice and Remedies Code § 20.002.

Rather than proceed under the appropriate statute for civil proceedings, however, the Fulton County District Attorney improperly invoked the “Uniform Act to Secure the Attendance of Witnesses from Without a State in *Criminal Proceedings*” (the “Uniform Act”), which has been adopted by both Georgia and Texas. *See* GA. CODE § 24-13-94; TEX. CODE CRIM. P. art. 24.28. The Uniform Act is limited to *criminal* proceedings—not including Georgia’s *civil* “Special Purpose Grand Juries”—and allows a foreign court (here, the Georgia court) to request that a Texas court order that a witness be made to appear before it, assuming the foreign judge has reviewed evidence and made a factual finding that the witness is a material witness to the criminal action.

Moreover, not only did the Georgia district attorney proceed under the wrong statute, but the district attorney’s motion was also *per se* invalid under both states’ law. Whether in Georgia or Texas, an application for a Certificate of Materiality under the Uniform Act must include a motion supported by “‘evidence of facts to show that the proposed witness is material,’ and may not rely on the statements of counsel alone.” *Bowman v. State*, 872 S.E.2d 485, 489 (Ga. Ct. App. 2022) (quoting *Young v. State*, 749 S.E.2d 423, 427 (Ga. Ct. App. 2013)); *accord Weaver v. State*, 657 S.W.2d 148, 150-51 (Tex. Ct. Crim. App. 1983). As the

Georgia Supreme Court explained in *Parker v. State*, 769 S.E.2d 329 (Ga. 2015), “obtaining production of a material witness under the out-of-state witness act requires proof of various facts pertaining to the particular witness and case.” *Id.* at 335.

Rather than presenting any evidence of materiality for the Georgia court to consider, the Fulton County District Attorney filed an unsworn motion with no evidentiary support. R.032–35. Indeed, the motion’s key “fact” in support of the claim that Mrs. Pick is a material witness *is undisputedly false*. Compare R.032–33, with R.054. While the unsworn and unsupported motion claimed that Mrs. Pick was a material witness because she was an attorney representing Donald Trump or his campaign, that is simply not true. R.054.

Without presenting any of the evidentiary support required under the Uniform Act, the Fulton County District Attorney asked the Georgia court to deem Mrs. Pick a material witness and submitted a proposed order for the Georgia court to sign. R.035. The Georgia court signed the prosecutor’s draft order as received. R.005.

The Certificate of Materiality signed by the Georgia court asks for Mrs. Pick to appear in Georgia on July 12, 2022 and testify for an unspecified amount of days—“until the conclusion of the Witness’s testimony”—which the Georgia judge certified could last as long as 51 days. R.003. It also fails to properly inform Mrs.

Pick of the reasons why she has been deemed a material witness or the proposed scope of her testimony. *Id.* This is key, as Mrs. Pick was simultaneously served both with the Certificate of Materiality and a letter from the Georgia district attorney identifying her as a target of the “Special Purpose Grand Jury’s” investigation. R. 12. This utter failure to follow the law and provide proper notice deprives Mrs. Pick of her guaranteed constitutional due process rights.

C. Georgia’s Certificate is Served on Mrs. Pick and Presented to the Trial Court which Grants the Petition After a 4 Minute Hearing.

The Certificate of Materiality was sent to Texas, and the Dallas County District Attorney’s office filed its petition to secure Mrs. Pick’s attendance on July 11, 2022. Mrs. Pick was not served with the Petition until July 14—two days after the date on which the Certificate had requested her to appear in Georgia.

Mrs. Pick filed a response to the State’s Petition. R.067. In the response, she pointed out that the Uniform Act did not apply to Georgia’s unique “Special Purpose Grand Jury,” noted the numerous flaws in Georgia’s application, and stressed that the State could not meet its burden to show that she was a material and necessary witness. After full briefing, the matter was heard by the Honorable Judge Rick Magnis, sitting by assignment, on August 15, 2022. R.088.

After a four-minute hearing where the trial court declined to hear argument, Judge Magnis ordered that Mrs. Pick must appear in front of the Fulton County “Special Purpose Grand Jury” on August 25, 2022. R.096–99.

D. Mrs. Pick Petitions for Writ of Mandamus.

Mrs. Pick first presented a petition for writ of mandamus to the Fifth Court of Appeals in Dallas on August 18, 2022. R.119–213. She concurrently moved to stay the district court’s order. R.106–18. Though Mrs. Pick emphasized the urgency of her petition and motion to stay, the Fifth Court of Appeals waited until late in the day on August 23—one day before she was scheduled to fly to Georgia—to deny her petition in a two-page opinion which cited a purported procedural defect and did not reach the merits of the petition. R.334–35. The court accordingly denied the motion to stay as moot. *Id.*

As discussed in detail in the Petition for Writ of Mandamus, the court of appeals’ opinion was erroneous as there was no procedural defect – indeed, the Fifth Court of Appeals has accepted records with the same language in other matters – and even if a defect existed, the court of appeals’ opinion both (1) failed to inform Mrs. Pick what the alleged error was so that it could be cured, and (2) erroneously held that the alleged defect mandated a denial of the mandamus action.

Because Mrs. Pick is scheduled to fly to Georgia today – mere hours from now – so that she can comply with the trial court’s order to appear before the Special Grand Jury on Thursday, August 25, she now seeks emergency relief from this Court. Accordingly, Mrs. Pick has filed a Petition for Writ of Mandamus concurrently with this Motion to Stay.

III.

ARGUMENT & AUTHORITIES

Pursuant to Texas Rule of Appellate Procedure 52.10, when considering a Petition for Writ of Mandamus, an appellate court may “grant any just relief pending the court’s action on the petition.” TEX. R. APP. P. 52.10(b). The relief can be granted with or without notice to any party. *Id.*

A court should grant a motion to stay a trial court order when needed to protect the ability of the appellate court to consider and rule on the Petition for Mandamus. *In re Johnston*, No. 07-22-00177-CV, 2022 WL 2376294, at *1 (Tex. App.—Amarillo June 28, 2022, orig. proceeding); *see also In re Reed*, 901 S.W.2d 604, 609 (Tex. App.—San Antonio 1995, orig. proceeding) (holding that stay order was necessary “for the purpose of protecting our jurisdiction so that we could consider the merits of that mandamus action.”). Though there are not many published opinions discussing motions to stay, Texas courts regularly grant stays to preserve their jurisdiction. *E.g.*, Order, *Ex Parte Gonzales*, No. WR-70,969-03 (Tex. Ct. Crim. App. July 11, 2022); *Julian v. Qin Gu*, No. 05-22-00519-CV (Tex. App.—June 16, 2022).

Mrs. Pick has filed a Petition for Writ of Mandamus challenging the trial court’s order. That Petition presents numerous unique legal questions which need to be addressed. While Mrs. Pick is confident that the Petition is meritorious and

that the Court will grant the Petition once it has a chance to consider the merits, Mrs. Pick recognizes that the concerns presented in the Petition will likely require time for the Court to consider the multi-state issues raised therein.

As the trial court's order requires Mrs. Pick to travel to Georgia in a few hours so that she may testify on Thursday (August 25, 2022), the Petition will be moot and this Court will lose jurisdiction absent a stay (or an extremely quick ruling on the Petition). That concern is the exact reason Rule 52.10 exists. *In re Kelleher*, 999 S.W.2d 51, 52 (Tex. App.—Amarillo 1999, orig. proceeding) (Rule 52.10 exists to afford court opportunity to address dispute encompassed within petition for mandamus by maintaining status quo until it can address that dispute).

Finally, Mrs. Pick notes that a stay of the trial court's order will maintain the status quo and will not in any way prejudice the State's ultimate request for relief. The "Special Purpose Grand Jury" has been empaneled until May 1, 2023. R.040–42. The Fulton County District Attorney recently stated that she hoped the "Special Purpose Grand Jury" might be ready to issue a report by the end of the year. Thus, there is no reason why Mrs. Pick needs to testify in Georgia *on August 25*, and a stay for this Court to have time to consider the merits of the mandamus action will not prejudice Georgia should this Court ultimately deny the requested relief.

On these facts, therefore, the Court should grant the Emergency Motion for Stay. *See In re Johnston*, No. 07-22-00177-CV, 2022 WL 2376294, at *1 (staying trial court's orders "[t]o afford sufficient time for this Court to review the merits of relator's petition"); *In re Reed*, 901 S.W.2d at 609 (granting emergency stay "to maintain the status quo and preserve our jurisdiction to consider the merits of the petition for writ of mandamus").

IV.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Relator, **JACKI L. PICK**, prays the Court grant her Emergency Motion to Stay and stay the trial court's order pending disposition of Relator's Petition for Writ of Mandamus. Relator requests such other and further relief to which she may be justly entitled.

Dated: August 24, 2022

Respectfully submitted,

/s/ Geoffrey S. Harper

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CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure 52.10(a), I certify that I notified the real party in interest by expedited means (via email) that a motion for temporary relief was going to be filed prior to submitting it to the Court.

/s/ Geoffrey S. Harper

Geoffrey S. Harper

CERTIFICATE OF SERVICE

The undersigned counsel of record for Relator Jacki L. Pick hereby certifies that true and correct copies of Relator Jacki L. Pick's Emergency Motion to Stay have been forwarded by electronic service on August 24, 2022 to counsel of record, including the Respondent, as listed below:

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